

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL JAMES LONGORIO,

Plaintiff, No. CIV S-04-2650 DFL KJM P

vs.

D.L. RUNNELS, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under the authority of 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of this action, \$150.00. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These

1 payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court  
2 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
3 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief  
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
8 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
9 U.S.C. § 1915A(b)(1),(2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
12 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 A complaint, or portion thereof, should only be dismissed for failure to state a  
18 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set  
19 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &  
20 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer  
21 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a  
22 complaint under this standard, the court must accept as true the allegations of the complaint in  
23 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the  
24 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,  
25 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 Plaintiff alleges he suffers from celiac disease and must eat a wheat and gluten  
2 free diet. He claims he began suffering from the disease in 2000, but prison doctors failed to  
3 diagnose the illness correctly. Compl. at 3. In 2001, plaintiff was sent to an outside specialist,  
4 who prescribed the special diet. Id. Nevertheless, the defendants have refused to accommodate  
5 his special needs and deny him medical care. Id. He also alleges he has been denied access to  
6 housing, programs and services as a result of his disability, in violation of 42 U.S.C. §§ 12102,  
7 12133l; 29 U.S.C. § 794a.

8 A. Medical Care And Special Diet

9 In Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Supreme Court held that  
10 inadequate medical care did not constitute cruel and unusual punishment cognizable under  
11 section 1983 unless the mistreatment rose to the level of "deliberate indifference to serious  
12 medical needs." To establish deliberate indifference, a plaintiff must show that defendants knew  
13 of and disregarded an excessive risk to his health or safety. Farmer v. Brennan, 511 U.S. 825,  
14 837 (1994). A prison official must "both be aware of facts from which the inference could be  
15 drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id.  
16 The nature of a defendant's responses must be such that the defendant purposefully ignores or  
17 fails to respond to a prisoner's pain or possible medical need in order for "deliberate indifference"  
18 to be established. McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir.1992), overruled in part on  
19 other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997).  
20 Deliberate indifference may occur when prison officials deny, delay, or intentionally interfere  
21 with medical treatment, or may be demonstrated by the way in which prison officials provide  
22 medical care. Id. at 1059-60. A serious medical need is an "injury that a reasonable doctor or  
23 patient would find worthy of comment or treatment" or "serious or chronic pain." Estelle, 429  
24 U.S. at 104; McGuckin, 974 F.2d at 1059-60. A denial of a medically indicated special diet  
25 may state an Eighth Amendment claim. Thompson v. Gibson, 289 F.3d 1218, 1222 (10th Cir.  
26 2002).

1           Measured against the foregoing standards, the court finds the allegations in  
2 plaintiff's complaint so vague and conclusory that it is unable to determine whether the current  
3 complaint states a claim for relief. Plaintiff alleges in general terms that he has been denied  
4 adequate medical care, without describing the nature of the care allegedly denied. He claims that  
5 he has been denied his special diet, without describing the impact, if any, on his health.  
6 Accordingly, the complaint does not contain a short and plain statement as required by Fed. R.  
7 Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must  
8 give fair notice and state the elements of the claim plainly and succinctly. Jones v. Community  
9 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some  
10 degree of particularity overt acts in which defendants engaged that support plaintiff's claim. Id.  
11 Because plaintiff has failed to comply with the requirements of Federal Rule of Civil Procedure  
12 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an  
13 amended complaint, if plaintiff is able to do so while complying with the mandates of Federal  
14 Rule of Civil Procedure 11.

15 **B. ADA and Rehabilitation Act Claims**

16           Plaintiff asserts violations of the Americans With Disabilities Act, 42 U.S.C.  
17 §§ 12112, 12133, and the Rehabilitation Act, 29 U.S.C. §794a.

18           To state a claim of disability discrimination under Title II [of the  
19 ADA], the plaintiff must allege four elements: (1) the plaintiff is an  
20 individual with a disability; (2) the plaintiff is otherwise qualified  
21 to participate in or receive the benefit of some public entity's  
22 services, programs, or activities; (3) the plaintiff was either  
23 excluded from participation in or denied the benefits of the public  
24 entity's services, programs, or activities, or was otherwise  
25 discriminated against by the public entity; and (4) such exclusion,  
26 denial of benefits, or discrimination was by reason of the plaintiff's  
disability.

27           Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002), cert. denied, 538 U.S. 921 (2003).

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1 A claim under the Rehabilitation Act also has four elements:

2 1) [plaintiff] is a “handicapped individual,” 2) [plaintiff] is  
3 “otherwise qualified” for participation in the program, 3) the  
4 program receives “federal financial assistance,” and 4) [plaintiff]  
was “denied the benefits of” or “subject to discrimination” under  
the program.

5 Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368, 1380 (3d Cir. 1991). A person is  
6 a “handicapped individual” if he has a substantially limiting impairment and is “otherwise  
7 qualified” if he can meet the requirements of the program in spite of the handicap. Thornhill v.  
8 Marsh, 866 F.2d 1182, 1183-84 (9th Cir. 1989).

9 Plaintiff has alleged that he is disabled, but has simply failed to make any attempt  
10 to plead the other elements. Once again, the complaint does not contain a short and plain  
11 statement as required by Federal Rule of Civil Procedure 8(a)(2).

12 **III. Standards For The Amended Complaint**

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
14 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
15 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
16 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
17 there is some affirmative link or connection between a defendant's actions and the claimed  
18 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
19 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
20 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
21 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

22 In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
23 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an  
24 amended complaint be complete in itself without reference to any prior pleading. This is  
25 because, as a general rule, an amended complaint supersedes the original complaint. See Loux  
26 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original

1 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an  
2 original complaint, each claim and the involvement of each defendant must be sufficiently  
3 alleged.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

6 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

7 The fee shall be collected and paid in accordance with this court's order to the Director of the  
8 California Department of Corrections filed concurrently herewith.

9 3. Plaintiff's complaint is dismissed.

10 4. Plaintiff is granted thirty days from the date of service of this order to file an  
11 amended complaint that complies with the requirements of the Civil Rights Act, the Federal  
12 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the  
13 docket number assigned this case and must be labeled "Amended Complaint"; failure to file an  
14 amended complaint in accordance with this order will result in a recommendation that this action  
15 be dismissed.

16 DATED: May 17, 2005.

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19 UNITED STATES MAGISTRATE JUDGE  
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